

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 6301 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
of law as to the interpretation of the

4 constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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AAI SHREE KHODIYAR ENGLISH SCHOOL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MS MAMTA R VYAS for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/06/2006

ORAL JUDGMENT

1.In the present petition, the petitioner-school management has challenged an order dated 23-07-1996 passed by the Government ordering 20% cut in the grant payable to the petitioner school for one year. Short

facts leading to the present petition are that in the petitioner-school there was one vacancy for the post of senior clerk. The Government passed an order on 15-05-1996 directing the petitioner to absorb one Shri A.M. Patel, a surplus employee on the said post. The petitioner refused to accept Shri Patel as directed by the Government. Notice was issued calling upon the petitioner why action should not be taken for the said refusal. This was done on 7-06-1996. Before the conclusion of the said show cause notice proceedings, the employee of the petitioner-school holding post of junior clerk one Shri J.H. Solanki approached the Education Tribunal and obtained stay against filling up of the post of senior clerk. His stand was that proposal for his promotion is pending with the Government and until such proposal is decided no action should be taken to fill up the post of senior clerk. It is the case of the petitioner that by letter dated 18-06-1996 produced at page-28 in the petition, this development was brought to the notice of the District Education Officer by the petitioner despite which the impugned order dated 23-07-1996 came to be passed. Learned advocate Ms. Vyas appearing for the petitioner further, pointed out that eventually application filed

by Shri Solanki before the Education Tribunal came to be disposed of by an order dated 22-02-1999 making certain observations. Eventually according to the learned advocate for the petitioner, Government has decided to grant promotion to Shri Solanki to the post of senior clerk in the same school. On the basis of above factual background, it is contended by Ms. Vyas that impugned order requires to be recalled. She submitted that school was not at fault and it was on account of the interim injunction granted by the Education Tribunal that Shri Patel could not be absorbed as directed by the Government.

2. On the other hand learned AGP Shri Gori strongly urged that the School management delayed absorption of Shri Patel which facilitated Shri Solanki to approach the Tribunal. Such dilatory tactics should not be encouraged and order of the Government should be upheld.

3. Having heard learned advocates appearing for the parties, it appears that the Education Tribunal had granted injunction in favour of Shri Solanki and against filling up the post of senior clerk. This was

done on 15-06-1996. Initially order was passed on 15-5-1996 directing absorption of Shri Patel on the post of Senior clerk. Though there was some delay on the part of school management in complying with the order, in the facts of the present case, I find that once the Tribunal passed the order on 15-6-1996, the hands of the petitioner were tied down. According to the petitioner this aspect of the matter was brought to the notice of the authorities by letter dated 18-06-1996. This has not been denied by the respondent through an affidavit. Thus averments made on oath remain un-controverted. Learned AGP Shri Gori submitted that his instructions also do not dispute existence of such a communication. In the result, I am inclined to accept the word of the petitioner that such a letter was written. The factum of Tribunal granting interim injunction thus though brought to the notice of the authorities was not taken into account while passing the impugned order dated 23-7-1996. Considering all these aspects of the matter, I find that the impugned order is required to be quashed.

4. Before parting however, it must be noted that petitioner was also responsible for some delay in carrying out the directions issued by the Government.

The stand of the petitioner that the proposal for promotion of Shri Solanki from the post of junior clerk to senior clerk was pending and that therefore, it was not possible for the management to carry out the directions immediately, cannot be countenanced. When the Government is bearing the burden of payment of salary to the teaching and non teaching staff of various schools, the Government machinery must be allowed to regulate the staff movements. If the schools unilaterally decide and choose not to abide by the directions of the Government issued through competent authority empowered in this behalf under various rules and regulations, same would not only lead to chaotic situation but would also lead to payment of idle salary to the school employees. It is not possible to dispute nor has it been seriously disputed that the petitioner did not take prompt action to abide by the direction of the Government. This has come on record in the impugned order dated 23-7-1996. I therefore, find that the petitioner is substantially responsible for leading to the present litigation at-least.

5. In the result, for the above reasons, even while allowing the petition, I direct that the petitioner shall pay cost of Rs. 5,000/- (Rupees Five Thousand

Only) to the Government. With these directions the petition is disposed of. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(raghu)